

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III  
JUDGE**

July 16, 2010

Mr. Gregory Strong  
Ms. Lillie Brown  
535 Lexington Ave.  
Smyrna, DE 19977

Carolyn H. deBernard, Esq.  
Bonnie M. Benson, P.A.  
306 E. Camden-Wyoming Ave.  
Camden, DE 19934

RE: JKKB v. Gregory Strong and Lillie Brown  
C. A. No.: CPU5-10-000695

Decision on Defendants' Motion to Disqualify Plaintiff's Attorney

Dear Mr. Strong, Ms. Brown and Ms. deBernard:

The instant case is a civil appeal from Justice of the Peace Court. It involves a dispute between a landlord plaintiff and tenant defendants for money due pursuant to a lease agreement. At the Pre-Trial Conference for this matter on June 25, 2010, the defendants moved to have the plaintiff's attorney, Ms. Carolyn deBernard, disqualified as counsel for JKKB due to a conflict of interest. After hearing argument from both parties on this issue, the Court decided to take the matter under advisement. After a careful review of the law and facts pertaining to this issue, please be advised that the defendants' motion is denied.

The defendants contend that they became clients of Ms. deBernard when they saw her for an initial consultation concerning a different matter<sup>1</sup> and spoke to her several times on the phone for approximately a week thereafter. As a result of this alleged representation, the defendants claim that Ms. deBernard is precluded from representing

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<sup>1</sup> Mr. Strong indicated at the Pre-Trial Conference that he spoke with Ms. deBernard about a separate issue concerning a different piece of rental property, where he was the landlord.

JKKB in this matter against them. Ms. deBernard maintains that after the initial consultation, she declined to take the defendants as clients. She asserts that an attorney/client relationship never existed between herself and the defendants, and that her office sent the defendants a letter to that effect. It does not appear as though any confidential information regarding the instant matter was divulged to Ms. deBernard by the defendants during their initial consultation.

To disqualify an attorney under Rule 1.9 of the Delaware Lawyers' Rules of Professional Conduct, four criteria must be shown: (1) the attorney must have had an attorney/client relationship with the alleged former client; (2) the matter the attorney is presently working on for the new client must either be the same as, or substantially similar to, the matter worked on for the alleged former client; (3) the interests of the new client must be materially adverse to the interests of the alleged former client; and (4) the alleged former client must not have consented to representation after consultation. *Nemours Found. v. Gilbane*, 632 F. Supp. 418, 422 (D. Del. 1986).

In this case, the last two criteria have been established. JKKB's interests are materially adverse to the interests of the defendants and the defendants did not consent to Ms. deBernard's representation of JKKB. The first two criteria, however, have not been met. After an initial consultation with the defendants, Ms. deBernard sent them a letter explaining that she would not represent them and that no attorney/client relationship existed between them. In addition, this case is not the same as, or substantially similar to, the matter for which the defendants sought an initial consultation with Ms. deBernard. Therefore, the defendants' Motion to Disqualify Ms. deBernard as JKKB's attorney is denied.

**IT IS SO ORDERED.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles W. Welch, III